NO. 80-

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

GEORGE WEISENSEE,

Petitioner,

v.

THE SUPREME COURT OF SOUTH DAKOTA,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

MARK V. MEIERHENRY
ATTORNEY GENERAL
State Capitol
Pierre, South Dakota 57501
Telephone (605) 773-3215

Counsel for Respondents

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QUESTIONS PRESENTED

I

WHETHER ALLEGED PROCEDURAL IRREGULARITIES IN THE DISBARMENT OF PETITIONER BY THE SUPREME COURT OF SOUTH DAKOTA DENIED PETITIONER'S FOURTEENTH AMENDMENT RIGHTS TO DUE PROCESS AND EQUAL PROTECTION.

II

WHETHER THE DISBARMENT OF PETITIONER BY THE SUPREME COURT OF SOUTH DAKOTA CONSTITUTED AN IMPAIRMENT OF CONTRACT IN VIOLATION OF ARTICLE I, SECTION 10 OF THE CONSTITUTION OF THE UNITED STATES; THE "CONTRACT" IN QUESTION BEING PETITIONER'S PLEA BARGAIN WHICH WAS ACCEPTED BY THE STATE TRIAL COURT IN A CRIMINAL ACTION.

PARTIES TO THE PROCEEDING

Petitioner, George Weisensee, petitions for a Writ of Certiorari to review the judgment of disbarment entered against him by the Supreme Court of South Dakota on September 17, 1980, and amended on November 6, 1980, the same date that a Petition for Rehearing was denied. Prior to the judgment of disbarment, Petitioner had been an attorney licensed to practice law in the State of South Dakota.

Respondents are members of the Supreme Court of South Dakota: The Honorable Roger L. Wollman, Chief Justice; The Honorable Francis G. Dunn, The Honorable Jon Fosheim, The Honorable Frank E. Henderson, and the Honorable Robert E.

Morgan, Justices; and the Honorable Philo I. Hall, Circuit Judge, sitting for Justice Dunn, disqualified, at Petitioner's disbarment hearing.

TABLE OF CONTENTS

	PAGE
QUESTIONS PRESENTED	1
PARTIES TO THE PROCEEDING	2
TABLE OF AUTHORITIES	5
ADDITIONAL STATUTES INVOLVED	8
STATEMENT OF THE CASE	10
A. PRELIMINARY STATEMENT	
B. PROCEDURAL HISTORY AND RELEVANT FACTS	
SUMMARY OF ARGUMENT	12
ARGUMENT	16
I. Petitioner has failed to raise a substantial federal question.	
II. Alleged procedural irregularities in the disbarment of Petitioner by the Supreme Court of South Dakota did not deny Petitioner's Fourteenth Amendment rights to due process and equal protection.	
III. Petitioner's disbarment did not constitute an impairment of contract.	
CONCLUSION	37
CERTIFICATE OF SERVICE	38

TABLE OF AUTHORITIES

CASES:

Carrington v. Rash, 380 U.S. 89, 85 S.Ct. 775, 13 L.Ed.2d 675 (1965) 33

Danforth v. Egan, 23 S.D. 43, 119 N.W. 1021 (1909) 18

George Weisensee v. Roger L. Wollman, et al., (CIV 80-4202, U.S. Dist. Ct., D.S.S. 1980, pending) 12

Harper v. Virginia State Board of Elections, 383 U.S. 663, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966) 32

In re Brown, 64 S.D. 87, 264 N.W. 521 (1936) 18

In re Gorsuch, 76 S.D. 191, 75 N.W.2d 644, 57 A.L.R.2d 1355 (1956) 19

In re Summers, 325 U.S. 561, 571 (1945) 23, 24

In the Matter of The Discipline of George Weisensee, 88 S.D. 544, 224 N.W.2d 830 (1975) (Weisensee I) 10

In the Matter of the Discipline of George Weisensee, 296 N.W.2d 717-721, 723 (S.D. 1980) (Weisensee II) 10, 12, 13

Konigsberg v. State Bar of California, 353 U.S. 246-7, 252, 273 (1957) PASSIM

McGowan v. Maryland, 366 U.S.420, 81 S.Ct. 1101, 6 L.Ed.2d 393 (1961) 32, 33, 34

San Antonio School District v. Rodriguez, 411 U.S. 1, 93 S.Ct. 1278, 36 L.Ed.2d 16 (1973), reh. denied, 411 U.S. 959, 93 S.Ct. 1919, 36 L.Ed.2d 418 32, 33

Schware v. Board of Bar Examiners of the State of New Mexico, 353 U.S. 232, 238, 246-7 (1957) PASSIM

Theard v. United States, 354 U.S. 278, 281 77 S.Ct. 1274, 1 L.Ed.2d 1342 (1957) 19, 20

United States v. Vuitch, 402 U.S. 62, 91 S.Ct. 1294, 28 L.Ed.2d 601 (1971) 34

United States Department of Agriculture v. Moreno, 413 U.S. 528, 93 S.Ct. 2821, 37 L.Ed.2d 782 (1973) 33

Weatherford v. Bursey, 429 U.S. 545 (1977) 37

Wilbur v. Howard, 70 F.Supp 930, (D.C. Ky.), revd. on other grounds, 166 F.2d 884 (6th Cir. 1947) 31

CONSTITUTIONAL PROVISIONS:

U. S. Constitution, Art. 1, § 10 2, 21, 25

STATUTES:

SDCL 16-19-22 8, 18

SDCL 16-19-36 8

SDCL 16-19-37 9, 28

SDCL 16-19-38 9, 15, 37

SDCL 16-19-39 28

SDCL 23A-27-13 36

SDCL 23A-27-14 13, 21

OTHER REFERENCES:

Anno., Suspension or Revocation of Medical or Legal Professional License as Violating Due Process, 98 L.Ed. 851, § 3[a], [b] 27

United States Supreme Court Rule 17(1)(c) 11, 16, 17

ADDITIONAL STATUTES INVOLVED

Respondents concur in the statement of Constitutional Provisions Involved and Statutes Involved, as set forth at pages 5-6 of Petition for a Writ of Certiorari, with the following additions:

SDCL 16-19-22:

> The Supreme Court shall have sole power to strike from the roll the name of any attorney and counselor at law and to revoke his license or to suspend him from the practice for such time as shall seem just for cause shown.

SDCL 16-19-36:

> The clerk of any court in this state in which an attorney is convicted of a serious crime shall within ten days of said conviction transmit a certificate thereof to the Supreme Court. The term 'serious crime' shall include any felony and any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime, involves improper conduct as an attorney, interference with the administration of justice, false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a serious crime.

SDCL 16-19-37:

If any attorney has been convicted of a serious crime as defined in § 16-19-36, the Supreme Court shall enter an order immediately suspending the attorney, whether the conviction resulted from a plea of guilty or nolo contendere or from a verdict after trial, or otherwise, and regardless of the pendency of an appeal, pending final disposition of a disciplinary proceeding to be commenced upon such conviction. Upon good cause shown, the Court may set aside such order restraining the attorney from engaging in the practice of law when it appears in the interest of justice so to do. An order suspending an attorney from the practice of law pursuant to this section shall constitute a suspension of the attorney for the purpose of §§ 16-19-74 to 16-19-82, inclusive, unless the Supreme Court shall otherwise order.

SDCL 16-19-38:

An attorney suspended under the provisions of § 16-19-37 will be reinstated immediately upon the filing of a certificate demonstrating that the underlying conviction of a serious crime has been reversed but the reinstatement will not terminate any proceeding then pending against the attorney.

STATEMENT OF THE CASE

A. PRELIMINARY STATEMENT

Petitioner seeks a writ of certiorari to review the judgment of the Supreme Court of the State of South Dakota disbarring Petitioner.[1] Petitioner asserts that alleged procedural irregularities in his disbarment denied Petitioner his Fourteenth Amendment rights to due process and equal protection, and that his disbarment unconstitutionally impaired a "contractual" plea bargain which Petitioner had entered into in a state criminal proceeding.[2]

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[1] This action concerns only the judgment of disbarment In the Matter of the Discipline of George Weisensee, 296 N.W.2d 717 (S.D. 1980) (Weisensee II), and does not relate to previous disciplinary actions. See In the Matter of The Discipline of George Weisensee, 88 S.D. 544, 224 N.W.2d 830 (1975) (Weisensee I).

[2] The State had originally charged Petitioner with three counts of grand theft and one count of conspiracy based upon unlawful dealing in mortgaged property. Under the terms of the plea bargain, the State dismissed the grand theft and conspiracy charges upon which Petitioner had been indicted and reduced the charge to a misdemeanor, attempted disposal of mortgaged property, on condition that

Petitioner premises his petition on Rule 17(c) of the United States Supreme Court Rules, which provides that certiorari will be granted where the petition sets forth an important federal question which has not been but should be settled by the United States Supreme Court, or where the judgment of the highest state court conflicts with applicable decisions of the United States Supreme Court.

B. PROCEDURAL HISTORY AND RELEVANT FACTS

The procedural history relating to the Petitioner's prosecution for attempted disposal of mortgaged property which resulted in suspended

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Petitioner surrender his license to practice law to the South Dakota Supreme Court.

The State trial court, by order dated December 20, 1978, suspended imposition of sentence on the misdemeanor charge, placed him on probation for one year, fined him $500, required payment of attorneys fees and outstanding checks, and required weekly attendance at Alcoholics Anonymous meetings. The state trial court did not order Petitioner to surrender his license to practice law.

imposition of sentence, as well as the chronological history of Petitioner's suspension from the practice of law, appearances before the Disciplinary Board of the State Bar, and Petitioner's subsequent disbarment, are set forth in detail in In the Matter of the Discipline of George Weisensee, 296 N.W.2d at 717-721 (S.D. 1980), Appendix A, Petition for Writ of Certiorari, incorporated herein by reference.[3]

SUMMARY OF ARGUMENT

The South Dakota Supreme Court acted within the scope of its authority, and within the bounds of the Constitution of the United States, in disbarring Petitioner. The record adduced at the disciplinary proceeding, including the state

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[3] There is currently pending in United States District Court, District of South Dakota, Southern Division, a civil rights action alleging due process and equal protection violations resulting from the same judgment of disbarment which is the basis for this Petition for Writ of Certiorari. George Weisensee v. Roger L. Wollman, et al., (CIV 80-4202, U.S. Dist. Ct., D.S.S. 1980, pending).

trial record in Petitioner's criminal prosecution, amply support the Supreme Court's finding that Petitioner's "conduct as manifested by the events that led to his conviction demonstrates that he is unfit to practice law." In the Matter of the Discipline of George Weisensee, 296 N.W.2d 717, 723 (S.D. 1980).

The South Dakota Supreme Court relied on evidence of "the events that led to [Petitioner's] conviction" rather than the conviction per se, in support of its finding of unfitness to practice law. Therefore, Petitioner's argument that suspended imposition of sentence is not a "conviction" in the strict sense of the word, even if accepted, would not have changed the outcome of the disciplinary proceeding. Furthermore, the South Dakota Supreme Court, in interpreting SDCL 23A-27-14, concluded that an order of dismissal of criminal charges entered pursuant to SDCL 23A-27-14 did not operate as a bar to possible institution of disciplinary proceedings

based on the underlying facts which were the basis of the criminal action. Thus, the South Dakota Supreme Court's judgment of disbarment rested exclusively on an interpretation of state law. The disbarment proceeding neither directly nor inferentially raised a substantial federal question.

Minimum due process requirements for attorney discipline were met or exceeded in Petitioner's disbarment proceeding; Petitioner had full notice and opportunity for hearing.

Petitioner's equal protection claim alleging discrimination against lawyers as a class is not clearly developed and has no evidentiary support. Even assuming for the sake of argument that evidence of such discrimination could be produced, the State's interest in insuring the integrity of the attorneys licensed to practice in its courts would provide a rational basis, if not a compelling state interest, justification for the

state licensing authority's broad powers to institute disciplinary actions against attorneys.

Petitioner's assertion that a plea bargain he negotiated in a state criminal proceeding was a "contract" which was unconstitutionally impaired by the institution of disciplinary proceedings after judgment was entered in the state criminal proceeding is unsupported by any legal authority. Respondents submit that even if the plea bargain could be deemed an enforceable "contract," that contract could not be legally binding on persons who were not a party to the bargain (i.e., State Bar Disciplinary Board or the South Dakota Supreme Court). Furthermore, the terms of the plea bargain did not, and could not guarantee that Petitioner would be immune from a disciplinary action instituted by the licensing and disciplinary authority of the State Bar, based on the facts underlying the criminal prosecution. SDCL 16-19-38.

Finally, Petitioner has failed to establish any substantial departure by the South Dakota Supreme Court from the decisions of this Court. Both Konigsberg v. State Bar of California, 353 U.S. 252 (1957) and Schware v. Board of Bar Examiners of the State of New Mexico, 353 U.S. 232 (1957) are legally and factually distinguishable from Petitioner's case.

ARGUMENT

I

PETITIONER HAS FAILED TO RAISE A SUBSTANTIAL FEDERAL QUESTION.

Rule 17(1) of the Rules of the Supreme Court of the United States outlines considerations governing review on certiorari:

> 1. A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.
>
> (a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal

> court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.
>
> (b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.
>
> (c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

Petitioner relies upon Rule 17(1)(c) as justification for review of his disbarment.

A. Attorney discipline as a state function.

The judgment of disbarment entered against Petitioner by the South Dakota Supreme Court rested exclusively on application and interpretation of state law. Under state law, the ultimate authority to disbar attorneys is vested in

the South Dakota Supreme Court. SDCL 16-19-22. It is "an inherent judicial power, which is as much the law of our land, and of as much dignity as such, as any law found in the Constitution or statutes; it is not dependent on either for its existence but exists fully in all courts of record unless expressly restricted or taken away by specific legislation." Danforth v. Egan, 23 S.D. 43, 119 N.W. 1021 (1909). See also, In re Brown, 64 S.D. 87, 264 N.W. 521 (1936).

The South Dakota Supreme Court has viewed the right to practice law, not as an absolute right, but as a privilege. It is a license granted by the Court upon admission to the bar, and subject to revocation upon a showing of unfitness. The Court has recognized the discipline of attorneys as essential to protect the Court and the public from attorneys who might pervert and abuse the privilege to practice law.

In re Gorsuch, 76 S.D. 191, 75 N.W.2d 644, 57 A.L.R.2d 1355 (1956).

The autonomy of the state judiciary over the members of the state bar has also received recognition in this Court. In Theard v. United States, 354 U.S. 278, 77 S.Ct. 1274, 1 L.Ed.2d 1342 (1957), this Court stated:

> The two judicial systems of courts, the state judicatures and federal judiciary, have autonomous control over the conduct of their officers, upon whom, in the present context, lawyers are included. The court's control over a lawyer's professional life derives from his relation to the responsibilities of the court. The matter was compendiously put by Mr. Justice Cardozo while Chief Judge of the New York Court of Appeals. 'Membership in the bar is a privilege burdened with conditions' (Matter of Rouss, [221 N.Y. 81, 84, 116 N.E. 782]). The appellant was received into that ancient fellowship for something more than private gain. He became an officer of the court, and, like the court itself, an instrument or agency to advance the ends of justice.' People ex rel. Karlin v. Culkin, 248 N.Y. 465, 470, 471, 162 N.E. 487, 489, 60 A.L.R. 851. The power of disbarment is necessary for the protection of the public in order to strip a man of the implied representation by courts

> that a man who is allowed to hold himself out to practice before them is in 'good standing' so to do (emphasis added).

354 U.S. at 281.

Thus, as a general proposition, the discipline of attorneys licensed to practice in state courts is a state, not a federal function.

B. Petitioner's disbarment was based on state, not federal law.

Petitioner's disbarment proceeding neither directly nor inferentially decided any important question of federal law which had not previously been settled by this Court.

The state record contains ample evidence justifying the criminal trial court's acceptance of Petitioner's guilty plea and imposition of suspended imposition of sentence. In the subsequent disciplinary proceeding, evidence of the events that led to Petitioner's conviction, not the conviction per se, was the basis for the Court's finding that Petitioner was unfit to practice law in the State of South Dakota.

In its decision, the South Dakota Supreme Court resolved an important question of state law in holding that the suspended imposition statute, SDCL 23A-27-14, did not operate as a bar to possible institution of a state bar disciplinary proceeding based on the underlying facts which were the basis of the criminal action. Absent some showing of a federal constitutional violation, this Court should not substitute its judgment for that of the state court's interpretation of state statutes.

C. The constitutional issues postulated by Petitioner lack sufficient substance to warrant review on certiorari.

Petitioner alleges that in the course of his disbarment he was denied due process and equal protection in violation of the Fourteenth Amendment, and that his contractual plea bargain was impaired by the disciplinary action of the South Dakota Supreme Court in violation of Article I, § 10 of the Constitution of the United States. The arguments exposing the insubstantial

nature of these claims are found in Arguments II and III, infra. Respondents contend that the issues raised do not in fact present substantial federal questions.

D. The South Dakota Supreme Court's judgment of disbarment does not conflict with applicable decisions of this court.

Although Petitioner alleges that the South Dakota Supreme Court's judgment of disbarment represents a substantial departure from applicable decisions of this Court, his argument fails to develop a genuine conflict with existing case law. Petitioner cites Schware v. Board of Bar Examiners of the State of New Mexico, 353 U.S. 232 at 238 (1957) in support of the proposition that a "state cannot exclude a person from his practice of law . . . in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment." Although Respondents endorse that legal principle, they take the position that Petitioner's

disbarment met or exceeded due process requirements, and that the application of state law was not so arbitrary or discriminatory as to deny Petitioner equal protection.

The only decisions of this Court cited by Petitioner in his argument are Konigsberg v. State Bar of California, 353 U.S. 252 (1957); Schware v. Board of Bar Examiners of the State of New Mexico, 353 U.S. 232 (1957); and In re Summers, 325 U.S. 561 (1945). Each of these cases is legally and factually distinguishable from Petitioner's case.

In re Summers, supra, was a review by this Court of the act of the Illinois Supreme Court in denying a consciencious objector's application for admission to the bar based on the applicant's refusal to take an oath to support the Constitution of Illinois. In upholding the Illinois court reaffirmed the general rule in favor of state autonomy in state bar admissions and disciplinary matters:

> The responsibility for choice as to the personnel of its bar rests with Illinois. Only a decision which violated a federal right secured by the Fourteenth Amendment would authorize our intervention.

325 U.S. at 571.

Konigsberg v. State Bar of California, supra, an applicant for admission to the California Bar was denied admission on grounds that the applicant had failed to demonstrate "good moral character" and had refused to answer questions regarding present and past affiliation with the Communist party. This Court found that the evidence before the California admissions committee when it rejected Konigsberg's application for admission did not rationally support the only two grounds upon which it had based its rejection and concluded that the admission committee's actions were so arbitrary and discriminatory as to violate due process and equal protection. The Court stressed that the California admissions committee had trammelled on very sensitive First

Amendment freedoms; freedom of political expression and association:

> We recognize the importance of leaving states free to select their own bars, but it is equally important that the state not exercise this power in an arbitrary or discriminatory manner nor in such way as to impinge on the freedom of political expression or association.

353 U.S. at 273.

Here, however, the factual record amply supports a finding of unfitness to practice. The actions of the South Dakota Supreme Court were neither arbitrary nor discriminatory, and sensitive First Amendment rights are not involved. Konigsberg is therefore distinguishable.

Finally, Petitioner relies upon Schware v. Board of Bar Examiners of the State of New Mexico, supra. In Schware, as in Konigsberg, the Court found a due process violation based on lack of support in the evidentiary record for the grounds for rejection of the bar applicant. In Schware, the Court found "no evidence in the

record which rationally justifies a finding that Schware was morally unfit to practice law." 353 U.S. at 246-7. The evidentiary record before the South Dakota Supreme Court at Petitioner's disbarment did rationally justify that Court's finding that Petitioner was unfit to practice law.

The decision of the South Dakota Supreme Court can be reconciled with each of the decisions of this Court cited by Petitioner.

II

ALLEGED PROCEDURAL IRREGULARITIES IN THE DISBARMENT OF PETITIONER BY THE SUPREME COURT OF SOUTH DAKOTA DID NOT DENY PETITIONER'S FOURTEENTH AMENDMENT RIGHTS TO DUE PROCESS AND EQUAL PROTECTION.

A. Petitioner has presented no substantial due process claim.

A state cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the

Fourteenth Amendment. Schware v. Board of Bar Examiners, supra; Konigsberg v. California State Bar, supra.

Procedural due process, that is, the element of the due process provisions of the Fifth and Fourteenth Amendments which relate to the requisite characteristics of proceedings seeking to effect a deprivation of life, liberty, or property may be described as follows:

> One whom it is sought to deprive of such rights must be given notice of the proceedings against him; he must be given an opportunity to defend himself at a hearing, and the proceedings looking toward the deprivation must be essentially fair.

Anno., Suspension or Revocation of Medical or Legal Professional License as Violating Due Process, 98 L.Ed. 851, § 3[a], [b].

Petitioner's disbarment complied with and exceeded the minimum due process requirements of notice, hearing and fairness. The South Dakota Supreme Court suspended Petitioner from

the practice of law pending the final disposition of disciplinary proceedings against him in accordance with the SDCL 16-19-37.[1]

Following SDCL 16-19-39, the Supreme Court referred the matter to the Disciplinary Board of the State Bar.[2] The Board filed its

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[1] SDCL 16-19-37 states: If any attorney has been convicted of a serious crime as defined in § 16-19-36, the Supreme Curt shall enter an order immediately suspending the attorney, whether the conviction resulted from a plea of guilty or nolo contendere or from a verdict after trial or otherwise, and regardless of the pendency of an appeal, pending final disposition of a disciplinary proceeding to be commenced upon such conviction. Upon good cause shown, the Court may set aside such order restraining the attorney from engaging in the practice of law when it appears in the interest of justice so to do. An order suspending an attorney from the practice of law pursuant to this section shall constitute a suspension of the attorney for the purpose of §§ 16-19-74 to 16-19-82, inclusive, unless the Supreme Court shall otherwise order.

[2] SDCL 16-19-39 states: Upon the receipt of a certificate of conviction of an attorney for a serious crime, the Supreme Court shall, in addition to suspending him in accordance with the provisions of § 16-19-37, also refer the matter to

report on May 3, 1979, recommending that the Petitioner be disbarred. Following two extensions of time for answering granted to Petitioner's counsel, Petitioner on August 16, 1979, filed an answer on his own behalf. Petitioner's counsel later withdrew as counsel of record.

A hearing on the Board's report and recommendation was set for October 15, 1979. Petitioner failed to appear on that date, and in lieu of an appearance tendered his resignation from the State Bar. The Supreme Court refused to accept Petitioner's resignation. The hearing on the Board's report and recommendation was then rescheduled for November 9, 1979. Petitioner represented himself at that hearing.

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the board or the attorney general for the institution of a formal proceeding in which the sole issue to be determined shall be the extent of the final discipline to be imposed, provided that a disciplinary proceeding so instituted will not be brought to hearing until all appeals from the conviction are concluded.

Following the hearing, the South Dakota Supreme Court entered an order directing Petitioner to file with the Court an affidavit setting forth certain facts brought out at the hearing. The order also directed that the matter be remanded to the Board for its consideration of the additional factual matters that had been presented to the Court by Petitioner at the hearing.

On January 22, 1980, the Board renewed its recommendation that Petitioner be disbarred. Petitioner challenged the Board's investigation and was allowed the opportunity to appear before the Board on April 25, 1980. Following that hearing the Board submitted to the Court a supplemental report recommending, among other things, that Petitioner be suspended from the practice of law for one year with credit for time already spent under suspension. The Court entered a judgment of disbarment on September 17, 1980.

Proceedings to suspend or revoke a legal professional license are free of any due process defects so far as procedure is concerned so long as the basic requisites of notice and hearing are complied with; the form of the notice and hearing is immaterial. Wilbur v. Howard, 70 F.Supp 930, (D.C. Ky.), revd. on other grounds, 166 F.2d 884 (6th Cir. 1947).

The South Dakota Supreme Court in its disbarment proceedings against Petitioner provided Petitioner both notice and an opportunity to be heard in satisfaction of Petitioner's due process rights.

B. Petitioner has presented no substantial equal protection claim.

The Petitioner raises but fails to develop any claim under the Fourteenth Amendment's equal protection clause. Even assuming that a statutory classification exists in the disciplinary statutes, no violation of the equal protection clause has been established.

The United States Supreme Court has held that the Fourteenth Amendment to the United States Constitution a wide scope of discretion in enacting laws which affect some groups of citizens differently than others. McGowan v. Maryland, 366 U.S.420, 81 S.Ct. 1101, 6 L.Ed.2d 393 (1961).

Regarding the right to practice law as not an absolute right but rather as a privilege governed by statute, it could not be deemed to be a fundamental right rooted in the Constitution. Harper v. Virginia State Board of Elections, 383 U.S. 663, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966). The test of strict judicial scrutiny is reserved for cases involving laws which operate to disadvantage suspect classes or interfere with the exercise of fundamental rights and liberties explicitly or implicitly protected by the Constitution. San Antonio School District v. Rodriguez, 411 U.S. 1, 93 S.Ct. 1278, 36 L.Ed.2d 16 (1973), reh. denied,

411 U.S. 959, 93 S.Ct. 1919, 36 L.Ed.2d 418. Therefore, use of traditional equal protection analysis is mandated.

Under traditional equal protection analysis, a mere classification by itself is not enough to establish a violation of the Equal Protection Clause of the Fourteenth Amendment. Carrington v. Rash, 380 U.S. 89, 85 S.Ct. 775, 13 L.Ed.2d 675 (1965). A legislative classification must be sustained if the classification itself is rationally related to a legitimate government interest. United States Department of Agriculture v. Moreno, 413 U.S. 528, 93 S.Ct. 2821, 37 L.Ed.2d 782 (1973). The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective. McGowan v. Maryland, supra. State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some

inequality. A state statute should not be set aside if any state of facts reasonably can be conceived to justify it. McGowan v. Maryland, supra. Statutes should be be construed whenever possible so as to uphold their constitutionality. United States v. Vuitch, 402 U.S. 62, 91 S.Ct. 1294, 28 L.Ed.2d 601 (1971).

The Petitioner complains of no specific classification in the disciplinary statutes. Even if one existed, e.g., lawyers vs. non-lawyers, the Respondents would argue that it is rationally related to the state's legitimate interest in supervising and maintaining standards of professional competence by placing discipline of state bar members exclusively in the State Supreme Court. Absent specificity, however, Petitioner has failed to state a claim upon which relief could be granted.

III

PETITIONER'S DISBARMENT DID NOT CONSTITUTE AN IMPAIRMENT OF CONTRACT.

Petitioner argues that his disbarment in some unspecified manner impaired his "contractual" plea bargain in violation of Article I, Section 10 of the Constitution of the United States. Petitioner cites no authority in support of this claim.

Assuming solely for the sake of argument that a plea bargain might constitute a "contract" within the meaning of Article I, § 10, Petitioner has failed to establish that the State in any way impaired his contractual plea bargain.

The terms of the plea bargain, simply stated, were that the State would dismiss the four felony charges for which Petitioner had been indicted and reduce the charge to a misdemeanor. Petitioner agreed to surrender his license to practice law to the South Dakota Supreme Court. There was no agreement to bar the State Bar Disciplinary Board from taking disciplinary measures had there been such an agreement, it would have been unenforceable since it would be totally

beyond the authority of a prosecutor to bargain away the disciplinary jurisdiction of the State Bar Disciplinary Board and the South Dakota Supreme Court. The only parties to the bargain were the prosecutor and the Petitioner. The bargain was accepted by the state trial court, and after receiving Petitioner's guilty plea, suspended imposition of sentence was imposed pursuant to SDCL 23A-27-13. Neither the State Bar Disciplinary Board nor the South Dakota Supreme Court were parties to the agreement. No terms or conditions in the plea bargain limited the disciplinary jurisdiction of the South Dakota Supreme Court.

Petitioner's allegation that the South Dakota Supreme Court abridged the plea bargain is not tenable. The South Dakota Supreme Court did not affect the state trial court's adjudication in the criminal action. The South Dakota Supreme Court merely relied in part on the

factual record of the criminal proceeding in support of its finding that Petitioner was unfit to practice law. Furthermore, in light of SDCL 16-19-38, which provides that pending disciplinary actions based on criminal conduct are not terminated when the underlying conviction is reversed, it would allow the disciplinary action against Petitioner to continue after suspended imposition conditions are met.

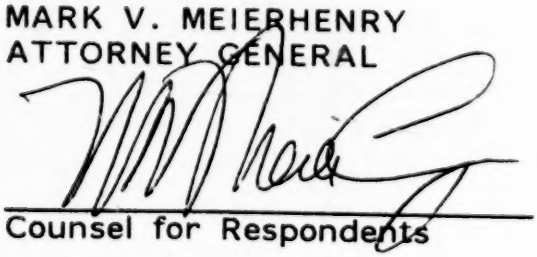
This Court has held that there is no constitutional right to engage in plea bargaining. Weatherford v. Bursey, 429 U.S. 545 (1977).

CONCLUSION

Respondents respectfully request that the Petition for a Writ of Certiorari be denied.

Respectfully submitted,

MARK V. MEIERHENRY
ATTORNEY GENERAL



Counsel for Respondents

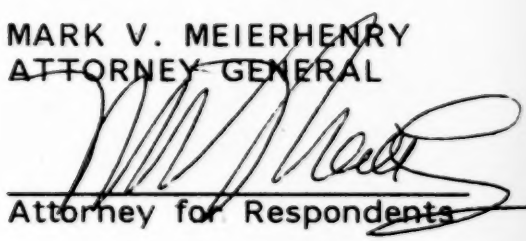
CERTIFICATE OF SERVICE

I hereby certify that three copies of Respondents' Brief in Opposition to Petition for a Writ of Certiorari were served by United States mail, first class, postage prepaid, upon Mr. L. Anthony Weisensee, 108 North Phillips Avenue, Sioux Falls, South Dakota, 57102, attorney for Petitioner.

In addition, I hereby certify that all parties required to be served have been served.

Dated this 4th day of March, 1981.

MARK V. MEIERHENRY
ATTORNEY GENERAL



Attorney for Respondents